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# Surrogacy Policy

TMA UBO AWG  
14 August 2008



# Agenda



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- Background
- Civilian Commercial Surrogate Pregnancy Policies
- Rejected 2004 Policy on Surrogacy
- Preliminary Questions
- Next Steps for TMA



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# Background

- Military wives and surrogacy in the news:
  - “Wombs for Rent”
  - Military wives are “attractive candidates” for surrogate mothers because “their health insurance, TRICARE...has some of the most comprehensive coverage for surrogates in the industry.”

*Newsweek, April 7, 2008*

- “Sorority of military spouses who are surrogate moms”
- “It’s become the ‘in’ thing to have a military surrogate”
- TRICARE coverage can “trim about one-fifth off the surrogacy price tag.” TRICARE “reserves the right to seek repayment...but surrogacy brokers say the rule is rarely if ever enforced.”

*San Diego Union-Tribune, June 29, 2008*



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# Background cont'd

- The articles, commentaries, and reactions from readers pose questions regarding the appropriateness of government funded surrogate births such as:
  - Is payment for medical expenses for pregnancy and childbirth incurred by TRICARE beneficiaries serving as surrogate mothers for non-TRICARE beneficiaries a *misuse of tax payer funds*?
  - Is payment for medical expenses for pregnancy and childbirth incurred by TRICARE beneficiaries serving as surrogate mothers *implied political support* for alternative forms of conception or assisted reproductive technology?

# Based on Current Law...



- Surrogate pregnancies are...
  - Not specifically authorized
  - Not specifically excluded
- 10 USC 1077 states:
  - **Only** the following types of health care may be provided under §1076
  - (a)(8): “maternity and infant care, including well-baby care...”
    - With no distinction made between pregnancies for the benefit of the covered individual and those that may be for the benefit of others



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# Commercial Policies

## Three Categories:

- 1) No Expressed Exclusion
  - Coverage generally denied, appeals process available
- 2) Expressed Exclusion
  - "Maternity charges incurred by a covered person acting as a surrogate mother are not covered charges."
- 3) No Coverage for a "Surrogate Mother"
  - An insured can't obtain coverage for *using* a surrogate to have a child
  - An eligible dependent only includes "a natural biological child," which may or may not cover a child to whom a surrogate gives birth but to whom she is not genetically related



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# Commercial Examples

## #1 Expressed Exclusion in Statement of Benefits

*Blue Cross & Blue Shield (South Carolina)*

“The following are not covered:

1. Charges for educational materials.
2. Charges for infertility diagnosis and treatment, including but not limited to drugs, artificial insemination, in-vitro fertilization, surrogate pregnancy, fees associated with sperm banking or reversal of sterilization.”

# Commercial Examples

## #2 Applicant Screening

*Blue Cross & Blue Shield (Nevada)*

“If the answer to any question below is YES, the policy cannot be issued:”

- (a) Is the applicant, spouse or any female dependent, whether or not listed on the application, currently pregnant, or in the process of adoption or surrogate pregnancy?
- (b) Is any male listed on this application expecting a child or in the process of adoption or surrogate pregnancy with anyone, whether or not the mother is listed on the application?



# Commercial Examples

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## #3 Risk Assessment

*Aetna*

Specifies surrogate pregnancy as a risk criteria in its Underwriting Guidelines

# Commercial Alternatives



- New Life Agency (via Lloyd's of London Insurance Company) provides:
  - Egg Donor and Recipient Cycle Coverage
  - Surrogate Prenatal and Delivery Maternity Coverage
  - Surrogate Accidental Death Insurance
  - International Newborn Care Coverage
  - Professional and General Liability Coverage for All Assisted Reproduction Coordinator's (Agencies, Attorneys, IVF Clinics)



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# 2004 Rejected Policy

- Focused on Billing Procedures
  - If the surrogate mother is a TRICARE beneficiary, any contractual arrangements between the surrogate mother and the adoptive parents to cover healthcare expenses are considered Other Health Insurance (OHI).
  - If MTFs become aware of a surrogacy contract or arrangement, it is incumbent on the respective MTF to actively seek reimbursement for any care/services provided to the surrogate mother



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# 2004 Rejected Policy cont'd

- Issues:

- May be difficult to identify surrogate pregnancies
- Various beneficiary status possibilities/combinations for gestational mother, newborn, intended parents
- Coordination of policy between direct care and purchase care patients
- No authority to assign undesignated funds in a surrogacy contract as money for health care expenses
- State law conflicts  
(if you rely on contractual obligations to define who pays and what they pay for)

# Preliminary Questions

1. Are health care services related to surrogate pregnancies TRICARE covered benefits?
2. Should the DoD be providing and paying for surrogate care?
3. Should active duty members be allowed to serve as surrogates given need for readiness, medical risks, cost, and remuneration for services?
4. How does the status of the sperm/egg donor surrogate and conceived infant impact eligibility for initial and future health care benefits?



# What's Next?



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## Options:

- 1) TMA UBO Policy
- 2) Amend the Law
- 3) Propose a New Regulation
- 4) Service Specific Internal Billing and Operations Procedures



# Recommendation



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TMA or HA Policy:

- **Health care services related to surrogate pregnancy are not TRICARE covered benefits**
  - Services responsible for determining strategy for implementation
- **Services may carve out an exception based on Secretarial Designee Status**
  - Based on individual service criteria each Service may elect to use its Secretarial Designee status for some surrogate pregnancies. Any approach taken should be Service-wide, whether it is on an entire class...or any other basis as specified by the Service.